



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment VII

LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2009 LRB-0141 (For: Rep. Cullen)


has been transferred to the drafting file for

2011 LRB-2366 (For: Rep. Cullen)



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 07/12/2011 (Per: PJK)

 The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin
LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX -
PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Transfer Requested: 09/08/2008 (Per: PJK)



☞ Appendix A ... Pt. 05 of 05

☞ The 2007 drafting file for LRB-2609

has been transferred to the drafting file for

2009 LRB-0141

☞ This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☞ The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-2609/P2

PJK:cjs:awn

stays
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SKL
x-ryd
PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note
(in 9-10)
Reyer Cat
1 AN ACT *to create* 708.15 of the statutes; **relating to:** the Uniform Residential
2 Mortgage Satisfaction Act.

Analysis by the Legislative Reference Bureau

Insert A
~~This is a preliminary draft. An analysis will be provided in a later version.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 708.15 of the statutes is created to read:

4 **708.15 Uniform residential mortgage satisfaction act. (1) DEFINITIONS.**

5 In this section:

6 (a) "Address for giving a notification" means, for the purpose of a particular
7 type of notification, the most recent address provided in a document by the intended
8 recipient of the notification to the person giving the notification, unless the person
9 giving the notification knows of a more accurate address, in which case the term
10 means that address.

(b) "Day" means calendar day.

(c) "Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(d) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(e) "Entitled person" means a person liable for payment or performance of the obligation secured by the real property described in a security instrument, or the landowner.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Landowner" means a person that, before foreclosure, has the right of redemption in the real property described in a security instrument. The term does not include a person that holds only a lien on the real property.

(h) "Notification" means a document containing information required under this section and signed by the person required to provide the information.

(i) "Payoff amount" means the sum necessary to satisfy a secured obligation.

(j) "Payoff statement" means a document containing the information specified in sub. (4) (d).

(k) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(L) "Recording data" means the date ~~and book and page number of~~ document number that indicate where a document is recorded in the appropriate governmental office. *of recording and the*

assigned by the register of deeds

****NOTE: I removed "under [the recording act of this state]" after "appropriate governmental office" because I'm not aware of a recording act under Wisconsin law. OK? Additionally, "appropriate governmental office" could be changed to "appropriate office of the register of deeds." Would you like to do that?

1 (m) "Residential real property" means real property located in this state that
2 is used primarily for personal, family, or household purposes and is improved by one
3 to 4 dwelling units.

4 (n) "Secured creditor" means a person that holds or is the beneficiary of a
5 security interest or that is authorized both to receive payments on behalf of a person
6 that holds a security interest and to record a satisfaction of the security instrument
7 upon receiving full performance of the secured obligation. The term does not include
8 a trustee under a security instrument.

9 (o) "Secured obligation" means an obligation the payment or performance of
10 which is secured by a security interest.

11 (p) "Security instrument" means an agreement, however denominated, that
12 creates or provides for an interest in residential real property to secure payment or
13 performance of an obligation, whether or not it also creates or provides for a lien on
14 personal property.

15 (q) "Security interest" means an interest in residential real property created
16 by a security instrument.

17 (r) "Sign" means, with present intent to authenticate or adopt a document, any
18 of the following:

- 19 1. To execute or adopt a tangible symbol.
- 20 2. To attach to or logically associate with the document an electronic sound,
21 symbol, or process.

(s) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(t) "Submit for recording" means to deliver, with required fees and taxes, a document sufficient to be recorded under this section, to the appropriate

governmental office.

****NOTE: I removed "under [the recording act of this state]" after "appropriate governmental office" because I'm not aware of a recording act under Wisconsin law. OK? Additionally, "appropriate governmental office" could be changed to "appropriate office of the register of deeds." Would you like to do that?

(u) "Title insurance company" means an organization authorized to conduct the business of insuring titles to real property in this state.

(2) NOTIFICATION: MANNER OF GIVING AND EFFECTIVE DATE. (a) A person gives a notification by doing any of the following:

1. Depositing it with the United States Postal Service with first class postage paid or with a commercially reasonable delivery service with cost of delivery provided, properly addressed to the recipient's address for giving a notification.

2. Sending it by facsimile transmission, electronic mail, or other electronic transmission to the recipient's address for giving a notification, but only if the recipient agreed to receive notification in that manner.

3. Causing it to be received at the address for giving a notification within the time that it would have been received if given in the manner provided in subd. 1.

(b) A notification is effective at any of the following times:

1. The day after it is deposited with a commercially reasonable delivery service for overnight delivery.

2. Three days after it is deposited with the United States Postal Service, first class mail with postage prepaid, or with a commercially reasonable delivery service for delivery other than by overnight delivery.

3. The day it is given, if given as provided in par. (a) 2.

4. The day it is received, if given by a method other than as provided in par. (a) 1. or 2.

(c) If this section or a notification given under this section requires performance on or by a certain day and that day is a Saturday, Sunday, or legal holiday under the laws of this state or the United States, the performance is sufficient if performed on the next day that is not a Saturday, Sunday, or legal holiday.

****NOTE: The uniform act indicates that this provision "should be omitted if the jurisdiction has in force a general statute with substantially the same effect." See s. 990.001 (4) (b). Do you want to remove par (c) above?

(3) DOCUMENT OF RESCISSION: EFFECT; LIABILITY FOR WRONGFUL RECORDING. (a) In this subsection, "document of rescission" means a document stating that an identified satisfaction or affidavit of satisfaction of a security instrument was recorded erroneously, the secured obligation remains unsatisfied, and the security instrument remains in force.

(b) If a person records a satisfaction or affidavit of satisfaction of a security instrument in error, the person may execute and record a document of rescission. Upon recording, the document rescinds an erroneously recorded satisfaction or affidavit.

(c) A recorded document of rescission has no effect on the rights of any of the following persons:

1 1. A person that acquired an interest in the real property described in a security
2 instrument after the recording of the satisfaction or affidavit of satisfaction of the
3 security instrument and before the recording of the document of rescission.

4 2. A person that would otherwise have priority over or take free of the lien
5 created by the security instrument.

***NOTE: I removed "under [the recording act of this state]" after "security instrument" because I'm not aware of a recording act under Wisconsin law. OK?

6 (d) A person that erroneously or wrongfully records a document of rescission
7 is liable to any person injured thereby for the actual damages caused by the recording
8 and reasonable attorney's fees and costs.

9 (4) PAYOFF STATEMENT: REQUEST AND CONTENT. (a) An entitled person, or an agent
10 authorized by an entitled person to request a payoff statement, may give to the
11 secured creditor a notification requesting a payoff statement for a specified payoff
12 date not more than 30 days after the notification is given. The notification must
13 contain all of the following:

14 1. The entitled person's name.

15 2. If given by a person other than an entitled person, the name of the person
16 giving the notification and a statement that the person is an authorized agent of the
17 entitled person.

18 3. A direction whether the statement is to be sent to the entitled person or that
19 person's authorized agent.

20 4. The address to which the secured creditor must send the statement.

21 5. Sufficient information to enable the secured creditor to identify the secured
22 obligation and the real property encumbered by the security interest.

1 (b) If a notification under par. (a) directs the secured creditor to send the payoff
2 statement to a person identified as an authorized agent of the entitled person, the
3 secured creditor must send the statement to the agent, unless the secured creditor
4 knows that the entitled person has not authorized the request.

5 (c) Within 10 days after the effective date of a notification that complies with
6 par. (a), the secured creditor shall issue a payoff statement and send it as directed
7 under par. (a) 3. in the manner prescribed in sub. (2) for giving a notification. A
8 secured creditor that sends a payoff statement to the entitled person or the
9 authorized agent may not claim that the notification did not satisfy par. (a). If the
10 person to whom the notification is given once held an interest in the secured
11 obligation but has since assigned that interest, the person need not send a payoff
12 statement but shall give a notification of the assignment to the person to whom the
13 payoff statement otherwise would have been sent, providing the name and address
14 of the assignee.

15 (d) A payoff statement must contain all of the following:

16 1. The date on which it was prepared and the payoff amount as of that date,
17 including the amount by type of each fee, charge, or other sum included within the
18 payoff amount.

19 2. The information reasonably necessary to calculate the payoff amount as of
20 the requested payoff date, including the per diem interest amount.

21 3. The payment cutoff time, if any, the address or place where payment must
22 be made, and any limitation as to the authorized method of payment.

23 (e) A payoff statement may contain the amount of any fees authorized under
24 this subsection not included in the payoff amount.

1 (f) A secured creditor may not qualify a payoff amount or state that it is subject
2 to change before the payoff date unless the payoff statement provides information
3 sufficient to permit the entitled person or the person's authorized agent to request
4 an updated payoff amount at no charge and to obtain that updated payoff amount
5 during the secured creditor's normal business hours on the payoff date or the
6 immediately preceding business day.

7 (g) A secured creditor must provide upon request one payoff statement without
8 charge during any 6-month period. A secured creditor may charge a fee of \$25 for
9 each additional payoff statement requested during that 6-month period. However,
10 a secured creditor may not charge a fee for providing an updated payoff amount
11 under par. (f) or a corrected payoff statement under sub. (5) (a).

****NOTE: The \$25 fee amount in the provision above was a suggested amount in the uniform act. Do you want something different?

12 (h) Unless the security instrument provides otherwise, a secured creditor is not
13 required to send a payoff statement by means other than first class mail. If the
14 secured creditor agrees to send a statement by another means, it may charge a
15 reasonable fee ^{of \$25} for complying with the requested manner of delivery.

16 (i) Except as otherwise provided in sub. (8), if a secured creditor to which a
17 notification has been given under par. (a) does not send a timely payoff statement
18 that substantially complies with par. (d), the secured creditor is liable to the entitled
19 person for any actual damages caused by the failure plus \$500, but not punitive
20 damages. A secured creditor that does not pay the damages provided in this
21 paragraph within 30 days after receipt of a notification demanding payment may
22 also be liable for reasonable attorney's fees and costs.

****NOTE: The \$500 damages amount in the provision above was a suggested amount in the uniform act. Do you want something different?

1 (5) UNDERSTATED PAYOFF STATEMENT: CORRECTION; EFFECT. (a) If a secured
2 creditor determines that the payoff amount it provided in a payoff statement was
3 understated, the secured creditor may send a corrected payoff statement. If the
4 entitled person or the person's authorized agent receives and has a reasonable
5 opportunity to act upon a corrected payoff statement before making payment, the
6 corrected statement supersedes an earlier statement.

7 (b) A secured creditor that sends a payoff statement containing an understated
8 payoff amount may not deny the accuracy of the payoff amount as against any person
9 that reasonably and detrimentally relies upon the understated payoff amount.

10 (c) This section does not do any of the following:

11 1. Affect the right of a secured creditor to recover any sum that it did not include
12 in a payoff amount from any person liable for payment of the secured obligation.

13 2. Limit any claim or defense that a person liable for payment of a secured
14 obligation may have under law other than this section.

15 (6) SECURED CREDITOR TO SUBMIT SATISFACTION FOR RECORDING; LIABILITY FOR
16 FAILURE. (a) *Except as provided in A. 706.05(10)(b),* A secured creditor shall submit for recording a satisfaction of a security
17 instrument within 30 days after the secured creditor receives full payment or
18 performance of the secured obligation. If a security instrument secures a line of
19 credit or future advances, the secured obligation is fully performed only if, in addition
20 to full payment, the secured creditor has received a notification requesting the
21 secured creditor to terminate the line of credit or containing a statement sufficient
22 to terminate the effectiveness of the provision for future advances in the security
23 instrument.

24 (b) Except as otherwise provided in sub. (8), *or A. 706.05(10)(b) and* a secured creditor that is required
25 to submit a satisfaction of a security instrument for recording and does not do so by

the end of the period specified in par. (a) is liable to the landowner for any actual damages caused by the failure, but not punitive damages.

(c) Except as otherwise provided in par. (d) and in sub. (8), a secured creditor that is required to submit a satisfaction of a security instrument for recording and does not do so by the end of the period specified in par. (a) is also liable to the landowner for \$500 and any reasonable attorney's fees and court costs incurred if, after the expiration of the period specified in par. (a), all of the following apply:

****NOTE: The \$500 amount in the provision above was a suggested amount in the uniform act. Do you want something different?

1. The landowner gives the secured creditor a notification, by any method authorized by sub. (2) that provides proof of receipt, demanding that the secured creditor submit a satisfaction for recording, and

2. The secured creditor does not submit a satisfaction for recording within 30 days after receipt of the notification.

(d) Paragraph (c) does not apply if the secured creditor received full payment or performance of the secured obligation before the effective date of this paragraph [revisor inserts date], or if A. 706.05 (10)(b) applies

(7) FORM AND EFFECT OF SATISFACTION. (a) A document is a satisfaction of a security instrument if it satisfies all of the following:

1. The document identifies the security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.

2. The document states that the person signing the satisfaction is the secured creditor.

A. 706.05 (8). ✓

1 3. The document contains a legal description of the real property identified in
2 the security instrument, but only if a legal description is necessary for a satisfaction
3 to be properly indexed.

4 4. The document contains language terminating the effectiveness of the
5 security instrument.

6 5. The document is signed by the secured creditor and acknowledged as
7 required by law for a conveyance of an interest in real property.

8 (b) The appropriate governmental office shall accept for recording a
9 satisfaction of a security instrument, unless any of the following apply:

 ****NOTE: I removed "under [the recording act of this state]" after "appropriate
 governmental office" because I'm not aware of a recording act under Wisconsin law. OK?
 Additionally, "appropriate governmental office" could be changed to "appropriate office
 of the register of deeds." Would you like to do that?

10 1. An amount equal to or greater than the applicable recording fees and taxes
11 is not tendered.

12 2. The document is submitted by a method or in a medium not authorized by
13 the appropriate governmental office.

 ****NOTE: I removed "under [the recording act of this state]" after "appropriate
 governmental office" because I'm not aware of a recording act under Wisconsin law. OK?
 Additionally, "appropriate governmental office" could be changed to "appropriate office
 of the register of deeds." Would you like to do that?

14 3. The document is not signed by the secured creditor and acknowledged as
15 required by law for a conveyance of an interest in real property.

16 **(8) LIMITATION OF SECURED CREDITOR'S LIABILITY.** A secured creditor is not liable
17 under this section if all of the following apply:

18 (a) The secured creditor established a reasonable procedure to achieve
19 compliance with its obligations under this section.

20 (b) The secured creditor complied with that procedure in good faith.

(c) The secured creditor was unable to comply with its obligations because of circumstances beyond its control.

(9) ELIGIBILITY TO SERVE AS SATISFACTION AGENT; REGULATION OF SATISFACTION AGENTS. (a) Any of the following may serve as a satisfaction agent under this section:

(a) A title insurance company, acting directly or through an agent authorized to sign and submit for recording an affidavit of satisfaction.

(b) An attorney licensed to practice law in this state and in good standing.

(b) The [name of statewide governmental agency] may establish registration, bonding, and other standards for conducting business as a satisfaction agent.

***NOTE: The uniform act indicates that this provision "may be omitted if a jurisdiction concludes that regulatory restriction of satisfaction agents is unnecessary." Do you want to keep this provision? If so, which agency do you want to perform the regulatory functions?

(10) NOTIFICATION TO CREDITOR OF AFFIDAVIT OF SATISFACTION. (a) If a secured creditor has not submitted for recording a satisfaction of a security instrument within the period specified in sub. (6) (a), a satisfaction agent acting for and with authority from the landowner may give the secured creditor a notification that the satisfaction agent intends to submit for recording an affidavit of satisfaction of the security instrument. The notification must include all of the following:

1. The identity and mailing address of the satisfaction agent.

2. Identification of the security instrument for which a recorded satisfaction is sought, including the names of the original parties to, and the recording data for, the security instrument.

3. A statement that the satisfaction agent has *personal knowledge of* reasonable grounds to believe all of the following:

a. That the real property described in the security instrument is residential real property.

1 b. That the person to which the notification is being given is the secured
2 creditor.

3 c. That the secured creditor has received full payment or performance of the
4 secured obligation.

5 4. A statement that a satisfaction of the security instrument does not appear
6 of record.

7 5. A statement that the satisfaction agent, acting with the authorization of the
8 owner of the real property described in the security instrument, intends to sign and
9 submit for recording an affidavit of satisfaction of the security instrument unless,
10 within 30 days after the effective date of the notification, any of the following occurs:

11 a. The secured creditor submits a satisfaction of the security instrument for
12 recording.

13 b. The satisfaction agent receives from the secured creditor a notification
14 stating that the secured obligation remains unsatisfied.

15 c. The satisfaction agent receives from the secured creditor a notification
16 stating that the secured creditor has assigned the security instrument and
17 identifying the name and address of the assignee.

18 (b) A notification under par. (a) must be sent by a method authorized by sub.
19 (2) that provides proof of receipt to the secured creditor's address for giving a
20 notification for the purpose of requesting a payoff statement or, if the satisfaction
21 agent cannot ascertain that address, to the secured creditor's address for notification
22 for any other purpose.

23 (c) This section does not require a person to agree to serve as a satisfaction
24 agent.

1 **(11) AUTHORIZATION TO SUBMIT AFFIDAVIT OF SATISFACTION FOR RECORDING. (a)**

2 Subject to pars. (b) and (c), a satisfaction agent may sign and submit for recording
3 an affidavit of satisfaction of a security instrument complying with sub. (12) if either
4 of the following applies:

5 1. The secured creditor has not, to the knowledge of the satisfaction agent,
6 submitted for recording a satisfaction of a security instrument within 30 days after
7 the effective date of a notification complying with sub. (10) (a).

8 2. The secured creditor authorizes the satisfaction agent to do so.

9 (b) A satisfaction agent may not sign and submit for recording an affidavit of
10 satisfaction of a security instrument if it has received a notification under sub. (10)
11 (a) 5. b. stating that the secured obligation remains unsatisfied.

12 (c) If a satisfaction agent receives a notification under sub. (10) (a) 5. c. stating
13 that the security instrument has been assigned, the satisfaction agent may not
14 submit for recording an affidavit of satisfaction of the security instrument without
15 doing both of the following:

16 1. Giving a notification of intent to submit for recording an affidavit of
17 satisfaction to the identified assignee at the identified address.

18 2. Complying with sub. (10) with respect to the identified assignee.

19 **(12) CONTENT OF AFFIDAVIT OF SATISFACTION.** An affidavit of satisfaction of a
20 security instrument must do all of the following:

21 (a) Identify the original parties to the security instrument, the secured creditor,
22 the recording data for the security instrument, and, if necessary for proper indexing
23 of the affidavit, a legal description of the real property identified in the security
24 instrument.

1 (b) State the basis, under sub. (9) (a) ^{or (b)} upon which the person signing the
2 affidavit is a satisfaction agent. ✓

3 (c) State that the person signing the affidavit has reasonable grounds to believe
4 that the real property described in the security instrument is residential real
5 property.

6 (d) State that the person signing the affidavit has reasonable grounds to believe
7 that the secured creditor has received full payment or performance of the secured
8 obligation.

9 (e) State that the person signing the affidavit, acting with the authority of the
10 owner of the real property described in the security instrument, gave notification to
11 the secured creditor of its intention to sign and submit for recording an affidavit of
12 satisfaction.

13 (f) Describe the method by which the person signing the affidavit gave
14 notification in compliance with this section.

15 (g) State either of the following:

16 1. That more than 30 days have elapsed since the effective date of that
17 notification, and the person signing the affidavit has no knowledge that the secured
18 creditor has submitted a satisfaction of the security instrument for recording and has
19 not received a notification that the secured obligation remains unsatisfied.

20 2. That the secured creditor authorized the person signing the affidavit to sign
21 and record an affidavit of satisfaction.

22 (h) Be signed by the satisfaction agent and acknowledged as required by law
23 for a conveyance of an interest in real property.

Insert 16-23

personal knowledge

(13) FORM OF AFFIDAVIT OF SATISFACTION. No particular phrasing of an affidavit of satisfaction is required. The following form of affidavit, when properly completed, is sufficient to satisfy the requirements of sub. (12):

....

(Date of Affidavit)

AFFIDAVIT OF SATISFACTION

The undersigned hereby states as follows:

(a) I am: [check whichever is appropriate]

1).... an officer or a duly appointed agent of [Name of title insurance company] (the "Company"), which is authorized to transact the business of insuring titles to interests in real property in this state, and I have been authorized by the Company to sign and submit for recording an affidavit of satisfaction.

2).... an attorney licensed to practice law in this state and in good standing.

(b) I am signing this Affidavit of Satisfaction to evidence full payment or performance of the obligations secured by real property covered by the following security instrument (the "security instrument") currently held by (the "secured creditor"):

Title of security instrument:

Original parties to security instrument:

County and state of recording:

Recording data for security instrument:

[Legal description, if necessary for proper indexing:]

(c) I have reasonable grounds to believe that:

1. the secured creditor has received full payment or performance of the balance of the obligations secured by the security instrument; and

Ensat 16-23 ✓

personal knowledge

1 2. the real property described in the security instrument constitutes residential
2 real property.

3 (d) With the authorization of the owner of the real property described in the
4 security instrument, I gave notification to the secured creditor by [method
5 authorized by s. 708.15 (2), Wis. stats., that provides proof of receipt] that I would
6 sign and record an affidavit of satisfaction of the security instrument if, within 30
7 days after the effective date of the notification, the secured creditor did not submit
8 a satisfaction of the security interest for recording or give notification that the
9 secured obligation remains unsatisfied.

10 (e) [check whichever is appropriate]

11 1) The 30-day period identified in par. (d) has elapsed, I have no knowledge
12 that the secured creditor has submitted a satisfaction for recording, and I have not
13 received notification that the secured obligation remains unsatisfied.

14 2) The secured creditor responded to the notification in par. (d) by authorizing
15 me to execute and record this affidavit of satisfaction.

16

17 (Signature of Satisfaction Agent)

18 (Notarization)

19 (14) EFFECT OF AFFIDAVIT OF SATISFACTION. (a) Upon recording, an affidavit
20 substantially complying with the requirements of sub. (12) constitutes a satisfaction
21 of the security instrument described in the affidavit.

22 (b) The recording of an affidavit of satisfaction of a security instrument does
23 not by itself extinguish any liability of a person for payment or performance of the
24 secured obligation.

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(c) The appropriate governmental office may not refuse to accept for recording an affidavit of satisfaction of a security instrument unless any of the following applies:

Insert 18-3

****NOTE: I removed "under [the recording act of this state]" after "appropriate governmental office" because I'm not aware of a recording act under Wisconsin law. OK? Additionally, "appropriate governmental office" could be changed to "appropriate office of the register of deeds." Would you like to do that?

1. An amount equal to or greater than the applicable recording fees and taxes is not tendered.

2. The affidavit is submitted by a method or in a medium not authorized by the appropriate governmental office under 4.59.43

****NOTE: I removed "under [the recording act of this state]" after "appropriate governmental office" because I'm not aware of a recording act under Wisconsin law. OK? Additionally, "appropriate governmental office" could be changed to "appropriate office of the register of deeds." Would you like to do that?

3. The affidavit is not signed by the satisfaction agent and acknowledged as required by law for a conveyance of an interest in real property.

(15) LIABILITY OF SATISFACTION AGENT. (a) Except as otherwise provided in par. (b), a satisfaction agent that records an affidavit of satisfaction of a security instrument erroneously or with knowledge that the statements contained in the affidavit are false is liable to the secured creditor for any actual damages caused by the recording and reasonable attorney's fees and costs.

(b) A satisfaction agent that records an affidavit of satisfaction of a security instrument erroneously is not liable if the agent properly complied with this section and the secured creditor did not respond in a timely manner to the notification as provided in sub. (10) (a) 5.

1 (c) If a satisfaction agent records an affidavit of satisfaction of a security
2 instrument with knowledge that the statements contained in the affidavit are false,
3 this subsection does not preclude any of the following:

- 4 1. A court from awarding punitive damages on account of the conduct.
- 5 2. The secured creditor from proceeding against the satisfaction agent under
6 law of this state other than this section.
- 7 3. The enforcement of any criminal statute prohibiting the conduct.

8 (16) UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing
9 this section, consideration must be given to the need to promote uniformity of the law
10 with respect to its subject matter among states that enact it.

11 (17) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

12 (a) Except as provided in par. (b), this section modifies, limits, and supersedes the
13 federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001,
14 et seq.

15 (b) This section does not modify, limit, or supersede 15 USC 7001 (c) or
16 authorize electronic delivery of any of the notices described in 15 USC 7003 (b).

17 (18) SHORT TITLE. This section may be cited as the Uniform Residential
18 Mortgage Satisfaction Act.

19 (END)

Insert 19-18

7-note

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2609/P2ins
PJK:.....

INSERT A

This bill incorporates into Wisconsin law the Uniform Residential Mortgage Satisfaction Act (URMSA), which addresses the recording of satisfactions when residential mortgages are paid in full. URMSA requires a creditor who has a security interest in residential real property to record with the register of deeds in the county in which the property is located a satisfaction of the security instrument (mortgage) within 30 days after the secured creditor receives full payment of the secured obligation. If the creditor does not do so within the required time, the creditor is liable to the landowner for any actual damages, but no punitive damages. The creditor is additionally liable to the landowner for \$500, plus any reasonable attorney fees and court costs, if, after not recording a satisfaction within the required time, the creditor received from the landowner a notice demanding that a satisfaction be recorded and the creditor did not thereafter record a satisfaction within 30 days after receiving the notice.

Current law also requires a mortgage-holder to record a satisfaction of mortgage within 30 days after the mortgagor completes full performance of the conditions of the mortgage, with an exception: if the mortgage has been fully performed, the mortgage-holder must record a satisfaction of mortgage within seven days after receiving by certified mail a written request from the mortgagor for a full satisfaction and is liable to the mortgagor for actual damages plus penalty damages of \$100 for each day that the violation remains uncorrected, up to \$2,000 in penalty damages. The bill retains this exception to record a satisfaction within seven days of receiving from the mortgagor a written request for a full satisfaction.

URMSA provides another satisfaction option for a landowner: recording an affidavit of satisfaction of a security instrument. If a secured creditor has not recorded a mortgage satisfaction within 30 days after full performance by the landowner, a satisfaction agent authorized by the landowner may give the secured creditor notice that the satisfaction agent intends to record an affidavit of satisfaction of the security instrument. An attorney licensed to practice law in this state and in good standing or a title insurance company acting through an agent may act as a satisfaction agent. The bill specifies the information that must be contained in the notice that is sent to the secured creditor, such as that the satisfaction agent has personal knowledge that the property is residential real property and that the secured creditor has received full payment. After providing the notice, the satisfaction agent may submit the affidavit of satisfaction to the register of deeds for recording if the secured creditor authorizes the satisfaction agent to do so or if the secured creditor does not, within 30 days after receiving the notice, record a satisfaction. The satisfaction agent may not record the affidavit of satisfaction, however, if the agent receives notice from the secured creditor that the secured obligation has not been satisfied or that the security instrument has been assigned, in which case the satisfaction agent must provide notice of the intention to record an affidavit of satisfaction to the assignee. A register of deeds may not refuse to record an affidavit of satisfaction that is properly signed and acknowledged and that is submitted with the applicable fees and by a method and in a medium authorized

requiring the recording of
the recording of

but

Ins A. contd

under current law. A recorded affidavit of satisfaction constitutes a satisfaction of the security instrument described in the affidavit. The bill contains penalties against a satisfaction agent who records an affidavit of satisfaction erroneously or with knowledge that the statements in the affidavit are false.

✓ In addition to the security instrument satisfaction provisions, the bill specifies acceptable methods for and the effective dates of providing notice under the bill. The bill also provides for the recording of a document of rescission, which rescinds an erroneously recorded satisfaction or affidavit of satisfaction, keeping the security instrument in force. Finally, the bill sets out the right of a person who is obligated under a security instrument to request a payoff statement from the secured creditor. The person or his or her authorized agent may give notice to the secured creditor requesting a payoff statement for a specified payoff date that is not more than 30 days from the date the notice is given. The secured creditor must issue a payoff statement within 10 days after the effective date of a notice that contains the information specified in the bill and may not charge the person for one payoff statement in any six-month period. The bill also specifies the information that the payoff statement must contain, and provides penalties against a secured creditor for not sending a timely payoff statement that substantially complies with the contents requirements in the bill. ←

(END OF INSERT A)

ten

INSERT 4-6

1 *not* register of deeds of the county in which the property is located ✓

(END OF INSERT 4-6)

INSERT 9-9

****NOTE: Should this paragraph except par. (c) 1. below? If a secured creditor may not deny the accuracy of an understated payoff amount against any person that relies on the amount, that would seem to include the person who is liable for the obligation. ✓

(END OF INSERT 9-9)

INSERT 16-23

****NOTE: Because of the change to proposed s. 708.15 (10) (a) 3. (intro.), I changed ~~have~~ reasonable grounds to believe ~~that~~ to ~~have~~ personal knowledge ~~that~~ *delete this period*

(END OF INSERT 16-23)

INSERT 18-3

period before quote

stays



Ins 18-3

****NOTE: I changed the phrase "appropriate governmental office" in the provision above to "register of deeds of the county in which the property is located." OK?

(END OF INSERT 18-3)

INSERT 19-18

1 **SECTION 1. Initial applicability.**

2 (1) If a security instrument that is in effect on the effective date of this
3 subsection contains a provision that is inconsistent with this act, this act first applies
4 to that security instrument on the date on which it is modified, extended, or renewed.

(END OF INSERT 19-18)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2609/P2dn

PJK:.....

Because the bill does not explicitly apply only to new mortgages (those entered into on or after the effective date), it applies to existing mortgages, also. In case an existing mortgage contains a provision that ^{is} ~~are~~ inconsistent with the bill, I have included an initial applicability provision that addresses that possibility to avoid any impairment of contract issues. Is this provision OK? ^{they are}

The modification of proposed s. 708.15 (7) in this version of the draft reconciles that provision with s. 706.05 (8) in current law. However, there was still a potential conflict between proposed s. 708.15 (6) and s. 706.05 (10) (b) in current law, so I made exceptions in proposed s. 708.15 (6) for s. 706.05 (10) (b) and the penalties in s. 706.05 (10) (c). Is this what you want to do, or do you want to let both stand as ^{is}?

If a mortgagor pays off the mortgage and mails a written request for a satisfaction under s. 706.05 (10) (b) in current law and the creditor does not record a satisfaction within 7 days from receiving the written request ~~and that is also more than~~ 30 days after the mortgage is paid off, the mortgagor could choose to collect damages under s. 706.05 (10) (c) in current law, record an affidavit of satisfaction under proposed s. 708.15 (11), or do both. Do you want to leave this as it is? The Uniform Act, itself, does not appear to eliminate the possibility of both collecting damages from a creditor under proposed s. 708.15 (6) (b) or (c) for not timely recording a satisfaction and recording an affidavit of satisfaction under proposed s. 708.15 (11). ^{or within}

Pamela J. Kahler
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2609/P2dn
PJK:cjs:pg

September 11, 2007

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- 1 AN ACT *to create* 708.15 of the statutes; **relating to:** the Uniform Residential
2 Mortgage Satisfaction Act.

Analysis by the Legislative Reference Bureau

This bill incorporates into Wisconsin law the Uniform Residential Mortgage Satisfaction Act (URMSA), which addresses the recording of satisfactions when residential mortgages are paid in full. URMSA requires a creditor who has a security interest in residential real property to record with the register of deeds in the county in which the property is located a satisfaction of the security instrument (mortgage) within 30 days after the secured creditor receives full payment of the secured obligation. If the creditor does not do so within the required time, the creditor is liable to the landowner for any actual damages, but no punitive damages. The creditor is additionally liable to the landowner for \$500, plus any reasonable attorney fees and court costs, if, after not recording a satisfaction within the required time, the creditor received from the landowner a notice demanding that a satisfaction be recorded and the creditor did not thereafter record a satisfaction within 30 days after receiving the notice.

Current law similarly requires a mortgage-holder to record a satisfaction of mortgage within 30 days after the mortgagor completes full performance of the conditions of the mortgage, but with an exception: if the mortgage has been fully performed, the mortgage-holder must record a satisfaction of mortgage within seven days after receiving by certified mail a written request from the mortgagor for a full satisfaction and is liable to the mortgagor for actual damages plus penalty damages of \$100 for each day that the violation remains uncorrected, up to \$2,000 in penalty

damages. The bill retains this exception requiring the recording of a satisfaction within seven days of receiving from the mortgagor a written request for a full satisfaction.

URMSA provides another satisfaction option for a landowner: recording an affidavit of satisfaction of a security instrument. If a secured creditor has not recorded a mortgage satisfaction within 30 days after full performance by the landowner, a satisfaction agent authorized by the landowner may give the secured creditor notice that the satisfaction agent intends to record an affidavit of satisfaction of the security instrument. An attorney licensed to practice law in this state and in good standing or a title insurance company acting through an agent may act as a satisfaction agent. The bill specifies the information that must be contained in the notice that is sent to the secured creditor, such as that the satisfaction agent has personal knowledge that the property is residential real property and that the secured creditor has received full payment. After providing the notice, the satisfaction agent may submit the affidavit of satisfaction to the register of deeds for recording if the secured creditor authorizes the satisfaction agent to do so or if the secured creditor does not, within 30 days after receiving the notice, record a satisfaction. The satisfaction agent may not record the affidavit of satisfaction, however, if the agent receives notice from the secured creditor that the secured obligation has not been satisfied or that the security instrument has been assigned, in which case the satisfaction agent must provide notice of the intention to record an affidavit of satisfaction to the assignee. A register of deeds may not refuse to record an affidavit of satisfaction that is properly signed and acknowledged and that is submitted with the applicable fees and by a method and in a medium authorized under current law. A recorded affidavit of satisfaction constitutes a satisfaction of the security instrument described in the affidavit. The bill contains penalties against a satisfaction agent who records an affidavit of satisfaction erroneously or with knowledge that the statements in the affidavit are false.

In addition to the security instrument satisfaction provisions, the bill specifies acceptable methods for and the effective dates of providing notice under the bill. The bill also provides for the recording of a document of rescission, which rescinds an erroneously recorded satisfaction or affidavit of satisfaction, keeping the security instrument in force. Finally, the bill sets out the right of a person who is obligated under a security instrument to request a payoff statement from the secured creditor. The person or his or her authorized agent may give notice to the secured creditor requesting a payoff statement for a specified payoff date that is not more than 30 days from the date the notice is given. The secured creditor must issue a payoff statement within ten days after the effective date of a notice that contains the information specified in the bill and may not charge the person for one payoff statement in any six-month period. The bill also specifies the information that the payoff statement must contain, and provides penalties against a secured creditor for not sending a

timely payoff statement that substantially complies with the content requirements in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 708.15 of the statutes is created to read:

2 **708.15 Uniform residential mortgage satisfaction act. (1) DEFINITIONS.**

3 In this section:

4 (a) "Address for giving a notification" means, for the purpose of a particular
5 type of notification, the most recent address provided in a document by the intended
6 recipient of the notification to the person giving the notification, unless the person
7 giving the notification knows of a more accurate address, in which case the term
8 means that address.

9 (b) "Day" means calendar day.

10 (c) "Document" means information that is inscribed on a tangible medium or
11 that is stored in an electronic or other medium and is retrievable in perceivable form.

12 (d) "Electronic" means relating to technology having electrical, digital,
13 magnetic, wireless, optical, electromagnetic, or similar capabilities.

14 (e) "Entitled person" means a person liable for payment or performance of the
15 obligation secured by the real property described in a security instrument, or the
16 landowner.

17 (f) "Good faith" means honesty in fact and the observance of reasonable
18 commercial standards of fair dealing.

19 (g) "Landowner" means a person that, before foreclosure, has the right of
20 redemption in the real property described in a security instrument. The term does
21 not include a person that holds only a lien on the real property.

1 (h) "Notification" means a document containing information required under
2 this section and signed by the person required to provide the information.

3 (i) "Payoff amount" means the sum necessary to satisfy a secured obligation.

4 (j) "Payoff statement" means a document containing the information specified
5 in sub. (4) (d).

6 (k) "Person" means an individual, corporation, business trust, estate, trust,
7 partnership, limited liability company, association, joint venture, public corporation,
8 government, or governmental subdivision, agency, or instrumentality, or any other
9 legal or commercial entity.

10 (L) "Recording data" means the date of recording and the document number
11 assigned by the register of deeds.

12 (m) "Residential real property" means real property located in this state that
13 is used primarily for personal, family, or household purposes and is improved by one
14 to 4 dwelling units.

15 (n) "Secured creditor" means a person that holds or is the beneficiary of a
16 security interest or that is authorized both to receive payments on behalf of a person
17 that holds a security interest and to record a satisfaction of the security instrument
18 upon receiving full performance of the secured obligation. The term does not include
19 a trustee under a security instrument.

20 (o) "Secured obligation" means an obligation the payment or performance of
21 which is secured by a security interest.

22 (p) "Security instrument" means an agreement, however denominated, that
23 creates or provides for an interest in residential real property to secure payment or
24 performance of an obligation, whether or not it also creates or provides for a lien on
25 personal property.

1 (q) "Security interest" means an interest in residential real property created
2 by a security instrument.

3 (r) "Sign" means, with present intent to authenticate or adopt a document, any
4 of the following:

- 5 1. To execute or adopt a tangible symbol.
- 6 2. To attach to or logically associate with the document an electronic sound,
7 symbol, or process.

8 (s) "State" means a state of the United States, the District of Columbia, Puerto
9 Rico, the United States Virgin Islands, or any territory or insular possession subject
10 to the jurisdiction of the United States.

11 (t) "Submit for recording" means to deliver, with required fees and taxes, a
12 document sufficient to be recorded under this section, to the register of deeds of the
13 county in which the property is located.

14 (u) "Title insurance company" means an organization authorized to conduct the
15 business of insuring titles to real property in this state.

16 (2) NOTIFICATION: MANNER OF GIVING AND EFFECTIVE DATE. (a) A person gives a
17 notification by doing any of the following:

18 1. Depositing it with the United States Postal Service with first class postage
19 paid or with a commercially reasonable delivery service with cost of delivery
20 provided, properly addressed to the recipient's address for giving a notification.

21 2. Sending it by facsimile transmission, electronic mail, or other electronic
22 transmission to the recipient's address for giving a notification, but only if the
23 recipient agreed to receive notification in that manner.

24 3. Causing it to be received at the address for giving a notification within the
25 time that it would have been received if given in the manner provided in subd. 1.

(b) A notification is effective at any of the following times:

1. The day after it is deposited with a commercially reasonable delivery service for overnight delivery.

2. Three days after it is deposited with the United States Postal Service, first class mail with postage prepaid, or with a commercially reasonable delivery service for delivery other than by overnight delivery.

3. The day it is given, if given as provided in par. (a) 2.

4. The day it is received, if given by a method other than as provided in par. (a) 1. or 2.

(c) If this section or a notification given under this section requires performance on or by a certain day and that day is a Saturday, Sunday, or legal holiday under the laws of this state or the United States, the performance is sufficient if performed on the next day that is not a Saturday, Sunday, or legal holiday.

(3) DOCUMENT OF RESCISSION: EFFECT; LIABILITY FOR WRONGFUL RECORDING. (a) In this subsection, "document of rescission" means a document stating that an identified satisfaction or affidavit of satisfaction of a security instrument was recorded erroneously, the secured obligation remains unsatisfied, and the security instrument remains in force.

(b) If a person records a satisfaction or affidavit of satisfaction of a security instrument in error, the person may execute and record a document of rescission. Upon recording, the document rescinds an erroneously recorded satisfaction or affidavit.

(c) A recorded document of rescission has no effect on the rights of any of the following persons:

1 1. A person that acquired an interest in the real property described in a security
2 instrument after the recording of the satisfaction or affidavit of satisfaction of the
3 security instrument and before the recording of the document of rescission.

4 2. A person that would otherwise have priority over or take free of the lien
5 created by the security instrument.

6 (d) A person that erroneously or wrongfully records a document of rescission
7 is liable to any person injured thereby for the actual damages caused by the recording
8 and reasonable attorney fees and costs.

9 **(4) PAYOFF STATEMENT: REQUEST AND CONTENT.** (a) An entitled person, or an agent
10 authorized by an entitled person to request a payoff statement, may give to the
11 secured creditor a notification requesting a payoff statement for a specified payoff
12 date not more than 30 days after the notification is given. The notification must
13 contain all of the following:

14 1. The entitled person's name.

15 2. If given by a person other than an entitled person, the name of the person
16 giving the notification and a statement that the person is an authorized agent of the
17 entitled person.

18 3. A direction whether the statement is to be sent to the entitled person or that
19 person's authorized agent.

20 4. The address to which the secured creditor must send the statement.

21 5. Sufficient information to enable the secured creditor to identify the secured
22 obligation and the real property encumbered by the security interest.

23 (b) If a notification under par. (a) directs the secured creditor to send the payoff
24 statement to a person identified as an authorized agent of the entitled person, the

1 secured creditor must send the statement to the agent, unless the secured creditor
2 knows that the entitled person has not authorized the request.

3 (c) Within 10 days after the effective date of a notification that complies with
4 par. (a), the secured creditor shall issue a payoff statement and send it as directed
5 under par. (a) 3. in the manner prescribed in sub. (2) for giving a notification. A
6 secured creditor that sends a payoff statement to the entitled person or the
7 authorized agent may not claim that the notification did not satisfy par. (a). If the
8 person to whom the notification is given once held an interest in the secured
9 obligation but has since assigned that interest, the person need not send a payoff
10 statement but shall give a notification of the assignment to the person to whom the
11 payoff statement otherwise would have been sent, providing the name and address
12 of the assignee.

13 (d) A payoff statement must contain all of the following:

14 1. The date on which it was prepared and the payoff amount as of that date,
15 including the amount by type of each fee, charge, or other sum included within the
16 payoff amount.

17 2. The information reasonably necessary to calculate the payoff amount as of
18 the requested payoff date, including the per diem interest amount.

19 3. The payment cutoff time, if any, the address or place where payment must
20 be made, and any limitation as to the authorized method of payment.

21 (e) A payoff statement may contain the amount of any fees authorized under
22 this subsection not included in the payoff amount.

23 (f) A secured creditor may not qualify a payoff amount or state that it is subject
24 to change before the payoff date unless the payoff statement provides information
25 sufficient to permit the entitled person or the person's authorized agent to request

1 an updated payoff amount at no charge and to obtain that updated payoff amount
2 during the secured creditor's normal business hours on the payoff date or the
3 immediately preceding business day.

4 (g) A secured creditor must provide upon request one payoff statement without
5 charge during any 6-month period. A secured creditor may charge a fee of \$25 for
6 each additional payoff statement requested during that 6-month period. However,
7 a secured creditor may not charge a fee for providing an updated payoff amount
8 under par. (f) or a corrected payoff statement under sub. (5) (a).

9 (h) Unless the security instrument provides otherwise, a secured creditor is not
10 required to send a payoff statement by means other than first class mail. If the
11 secured creditor agrees to send a statement by another means, it may charge a fee
12 of \$25 for complying with the requested manner of delivery.

13 (i) Except as otherwise provided in sub. (8), if a secured creditor to which a
14 notification has been given under par. (a) does not send a timely payoff statement
15 that substantially complies with par. (d), the secured creditor is liable to the entitled
16 person for any actual damages caused by the failure plus \$500, but not punitive
17 damages. A secured creditor that does not pay the damages provided in this
18 paragraph within 30 days after receipt of a notification demanding payment may
19 also be liable for reasonable attorney fees and costs.

20 **(5) UNDERSTATED PAYOFF STATEMENT: CORRECTION; EFFECT.** (a) If a secured
21 creditor determines that the payoff amount it provided in a payoff statement was
22 understated, the secured creditor may send a corrected payoff statement. If the
23 entitled person or the person's authorized agent receives and has a reasonable
24 opportunity to act upon a corrected payoff statement before making payment, the
25 corrected statement supersedes an earlier statement.

1 (b) A secured creditor that sends a payoff statement containing an understated
2 payoff amount may not deny the accuracy of the payoff amount as against any person
3 that reasonably and detrimentally relies upon the understated payoff amount.

****NOTE: Should this paragraph except par. (c) 1. below? If a secured creditor may not deny the accuracy of an understated payoff amount against any person that relies on the amount, that would seem to include the person who is liable for the obligation.

4 (c) This section does not do any of the following:

5 1. Affect the right of a secured creditor to recover any sum that it did not include
6 in a payoff amount from any person liable for payment of the secured obligation.

7 2. Limit any claim or defense that a person liable for payment of a secured
8 obligation may have under law other than this section.

9 (6) SECURED CREDITOR TO SUBMIT SATISFACTION FOR RECORDING; LIABILITY FOR
10 FAILURE. (a) Except as provided in s. 706.05 (10) (b), secured creditor shall submit
11 for recording a satisfaction of a security instrument within 30 days after the secured
12 creditor receives full payment or performance of the secured obligation. If a security
13 instrument secures a line of credit or future advances, the secured obligation is fully
14 performed only if, in addition to full payment, the secured creditor has received a
15 notification requesting the secured creditor to terminate the line of credit or
16 containing a statement sufficient to terminate the effectiveness of the provision for
17 future advances in the security instrument.

18 (b) Except as otherwise provided in sub. (8) or s. 706.05 (10) (b) and (c), a secured
19 creditor that is required to submit a satisfaction of a security instrument for
20 recording and does not do so by the end of the period specified in par. (a) is liable to
21 the landowner for any actual damages caused by the failure, but not punitive
22 damages.

1 (c) Except as otherwise provided in par. (d) and in sub. (8), a secured creditor
2 that is required to submit a satisfaction of a security instrument for recording and
3 does not do so by the end of the period specified in par. (a) is also liable to the
4 landowner for \$500 and any reasonable attorney fees and court costs incurred if,
5 after the expiration of the period specified in par. (a), all of the following apply:

6 1. The landowner gives the secured creditor a notification, by any method
7 authorized by sub. (2) that provides proof of receipt, demanding that the secured
8 creditor submit a satisfaction for recording.

9 2. The secured creditor does not submit a satisfaction for recording within 30
10 days after receipt of the notification.

11 (d) Paragraph (c) does not apply if the secured creditor received full payment
12 or performance of the secured obligation before the effective date of this paragraph
13 [revisor inserts date], or if s. 706.05 (10) (b) applies.

14 (7) FORM AND EFFECT OF SATISFACTION. A document is a satisfaction of a security
15 instrument if it satisfies s. 706.05 (8).

16 (8) LIMITATION OF SECURED CREDITOR'S LIABILITY. A secured creditor is not liable
17 under this section if all of the following apply:

18 (a) The secured creditor established a reasonable procedure to achieve
19 compliance with its obligations under this section.

20 (b) The secured creditor complied with that procedure in good faith.

21 (c) The secured creditor was unable to comply with its obligations because of
22 circumstances beyond its control.

23 (9) ELIGIBILITY TO SERVE AS SATISFACTION AGENT; REGULATION OF SATISFACTION
24 AGENTS. Any of the following may serve as a satisfaction agent under this section:

1 (a) A title insurance company, acting directly or through an agent authorized
2 to sign and submit for recording an affidavit of satisfaction.

3 (b) An attorney licensed to practice law in this state and in good standing.

4 **(10) NOTIFICATION TO CREDITOR OF AFFIDAVIT OF SATISFACTION.** (a) If a secured
5 creditor has not submitted for recording a satisfaction of a security instrument
6 within the period specified in sub. (6) (a), a satisfaction agent acting for and with
7 authority from the landowner may give the secured creditor a notification that the
8 satisfaction agent intends to submit for recording an affidavit of satisfaction of the
9 security instrument. The notification must include all of the following:

10 1. The identity and mailing address of the satisfaction agent.

11 2. Identification of the security instrument for which a recorded satisfaction is
12 sought, including the names of the original parties to, and the recording data for, the
13 security instrument.

14 3. A statement that the satisfaction agent has personal knowledge of all of the
15 following:

16 a. That the real property described in the security instrument is residential
17 real property.

18 b. That the person to which the notification is being given is the secured
19 creditor.

20 c. That the secured creditor has received full payment or performance of the
21 secured obligation.

22 4. A statement that a satisfaction of the security instrument does not appear
23 of record.

24 5. A statement that the satisfaction agent, acting with the authorization of the
25 owner of the real property described in the security instrument, intends to sign and

1 submit for recording an affidavit of satisfaction of the security instrument unless,
2 within 30 days after the effective date of the notification, any of the following occurs:

3 a. The secured creditor submits a satisfaction of the security instrument for
4 recording.

5 b. The satisfaction agent receives from the secured creditor a notification
6 stating that the secured obligation remains unsatisfied.

7 c. The satisfaction agent receives from the secured creditor a notification
8 stating that the secured creditor has assigned the security instrument and
9 identifying the name and address of the assignee.

10 (b) A notification under par. (a) must be sent by a method authorized by sub.
11 (2) that provides proof of receipt to the secured creditor's address for giving a
12 notification for the purpose of requesting a payoff statement or, if the satisfaction
13 agent cannot ascertain that address, to the secured creditor's address for notification
14 for any other purpose.

15 (c) This section does not require a person to agree to serve as a satisfaction
16 agent.

17 **(11) AUTHORIZATION TO SUBMIT AFFIDAVIT OF SATISFACTION FOR RECORDING.** (a)
18 Subject to pars. (b) and (c), a satisfaction agent may sign and submit for recording
19 an affidavit of satisfaction of a security instrument complying with sub. (12) if either
20 of the following applies:

21 1. The secured creditor has not, to the knowledge of the satisfaction agent,
22 submitted for recording a satisfaction of a security instrument within 30 days after
23 the effective date of a notification complying with sub. (10) (a).

24 2. The secured creditor authorizes the satisfaction agent to do so.

1 (b) A satisfaction agent may not sign and submit for recording an affidavit of
2 satisfaction of a security instrument if it has received a notification under sub. (10)
3 (a) 5. b. stating that the secured obligation remains unsatisfied.

4 (c) If a satisfaction agent receives a notification under sub. (10) (a) 5. c. stating
5 that the security instrument has been assigned, the satisfaction agent may not
6 submit for recording an affidavit of satisfaction of the security instrument without
7 doing both of the following:

8 1. Giving a notification of intent to submit for recording an affidavit of
9 satisfaction to the identified assignee at the identified address.

10 2. Complying with sub. (10) with respect to the identified assignee.

11 **(12) CONTENT OF AFFIDAVIT OF SATISFACTION.** An affidavit of satisfaction of a
12 security instrument must do all of the following:

13 (a) Identify the original parties to the security instrument, the secured creditor,
14 the recording data for the security instrument, and, if necessary for proper indexing
15 of the affidavit, a legal description of the real property identified in the security
16 instrument.

17 (b) State the basis, under sub. (9) (a) or (b), upon which the person signing the
18 affidavit is a satisfaction agent.

19 (c) State that the person signing the affidavit has personal knowledge that the
20 real property described in the security instrument is residential real property.

****NOTE: Because of the change to proposed s. 708.15 (10) (a) 3. (intro.), I changed
"reasonable grounds to believe" to "personal knowledge."

21 (d) State that the person signing the affidavit has personal knowledge that the
22 secured creditor has received full payment or performance of the secured obligation.

****NOTE: Because of the change to proposed s. 708.15 (10) (a) 3. (intro.), I changed
"reasonable grounds to believe" to "personal knowledge."

(e) State that the person signing the affidavit, acting with the authority of the owner of the real property described in the security instrument, gave notification to the secured creditor of its intention to sign and submit for recording an affidavit of satisfaction.

(f) Describe the method by which the person signing the affidavit gave notification in compliance with this section.

(g) State either of the following:

1. That more than 30 days have elapsed since the effective date of that notification, and the person signing the affidavit has no knowledge that the secured creditor has submitted a satisfaction of the security instrument for recording and has not received a notification that the secured obligation remains unsatisfied.

2. That the secured creditor authorized the person signing the affidavit to sign and record an affidavit of satisfaction.

(h) Be signed by the satisfaction agent and acknowledged as required by law for a conveyance of an interest in real property.

(13) FORM OF AFFIDAVIT OF SATISFACTION. No particular phrasing of an affidavit of satisfaction is required. The following form of affidavit, when properly completed, is sufficient to satisfy the requirements of sub. (12):

....

(Date of Affidavit)

AFFIDAVIT OF SATISFACTION

The undersigned hereby states as follows:

(a) I am: [check whichever is appropriate]

1. an officer or a duly appointed agent of [Name of title insurance company] (the "Company"), which is authorized to transact the business of insuring

1 titles to interests in real property in this state, and I have been authorized by the
2 Company to sign and submit for recording an affidavit of satisfaction.

3 2. an attorney licensed to practice law in this state and in good standing.

4 (b) I am signing this Affidavit of Satisfaction to evidence full payment or
5 performance of the obligations secured by real property covered by the following
6 security instrument (the "security instrument") currently held by (the "secured
7 creditor"):

8 Title of security instrument:

9 Original parties to security instrument:

10 County and state of recording:

11 Recording data for security instrument:

12 [Legal description, if necessary for proper indexing:]

13 (c) I have personal knowledge that:

****NOTE: Because of the change to proposed s. 708.15 (10) (a) 3. (intro.), I changed
"reasonable grounds to believe" to "personal knowledge."

14 1. the secured creditor has received full payment or performance of the balance
15 of the obligations secured by the security instrument; and

16 2. the real property described in the security instrument constitutes residential
17 real property.

18 (d) With the authorization of the owner of the real property described in the
19 security instrument, I gave notification to the secured creditor by [method
20 authorized by s. 708.15 (2), Wis. stats., that provides proof of receipt] that I would
21 sign and record an affidavit of satisfaction of the security instrument if, within 30
22 days after the effective date of the notification, the secured creditor did not submit

1 a satisfaction of the security interest for recording or give notification that the
2 secured obligation remains unsatisfied.

3 (e) [check whichever is appropriate]

4 1. The 30-day period identified in par. (d) has elapsed, I have no knowledge
5 that the secured creditor has submitted a satisfaction for recording, and I have not
6 received notification that the secured obligation remains unsatisfied.

7 2. The secured creditor responded to the notification in par. (d) by
8 authorizing me to execute and record this affidavit of satisfaction.

9

10 (Signature of Satisfaction Agent)

11 (Notarization)

12 (14) EFFECT OF AFFIDAVIT OF SATISFACTION. (a) Upon recording, an affidavit
13 substantially complying with the requirements of sub. (12) constitutes a satisfaction
14 of the security instrument described in the affidavit.

15 (b) The recording of an affidavit of satisfaction of a security instrument does
16 not by itself extinguish any liability of a person for payment or performance of the
17 secured obligation.

18 (c) The register of deeds of the county in which the property is located may not
19 refuse to accept for recording an affidavit of satisfaction of a security instrument
20 unless any of the following applies:

****NOTE: I changed the phrase "appropriate governmental office" in the provision
above to "register of deeds of the county in which the property is located." OK?

21 1. An amount equal to or greater than the applicable recording fees and taxes
22 is not tendered.

1 2. The affidavit is submitted by a method or in a medium not authorized under
2 s. 59.43.

3 3. The affidavit is not signed by the satisfaction agent and acknowledged as
4 required by law for a conveyance of an interest in real property.

5 **(15) LIABILITY OF SATISFACTION AGENT.** (a) Except as otherwise provided in par.
6 (b), a satisfaction agent that records an affidavit of satisfaction of a security
7 instrument erroneously or with knowledge that the statements contained in the
8 affidavit are false is liable to the secured creditor for any actual damages caused by
9 the recording and reasonable attorney fees and costs.

10 (b) A satisfaction agent that records an affidavit of satisfaction of a security
11 instrument erroneously is not liable if the agent properly complied with this section
12 and the secured creditor did not respond in a timely manner to the notification as
13 provided in sub. (10) (a) 5.

14 (c) If a satisfaction agent records an affidavit of satisfaction of a security
15 instrument with knowledge that the statements contained in the affidavit are false,
16 this subsection does not preclude any of the following:

17 1. A court from awarding punitive damages on account of the conduct.

18 2. The secured creditor from proceeding against the satisfaction agent under
19 law of this state other than this section.

20 3. The enforcement of any criminal statute prohibiting the conduct.

21 **(16) UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing
22 this section, consideration must be given to the need to promote uniformity of the law
23 with respect to its subject matter among states that enact it.

24 **(17) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.**

25 (a) Except as provided in par. (b), this section modifies, limits, and supersedes the

1 federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001,
2 et seq.

3 (b) This section does not modify, limit, or supersede 15 USC 7001 (c) or
4 authorize electronic delivery of any of the notices described in 15 USC 7003 (b).

5 (18) SHORT TITLE. This section may be cited as the Uniform Residential
6 Mortgage Satisfaction Act.

7 **SECTION 2. Initial applicability.**

8 (1) If a security instrument that is in effect on the effective date of this
9 subsection contains a provision that is inconsistent with this act, this act first applies
10 to that security instrument on the date on which it is modified, extended, or renewed.

11 (END)

